Supreme Court, U.S.
FILED
SEP 6 1985
JOSEPH F. SPANIOL, JR.
CLERK

No. 85-183

IN THE

SUPREME COURT OF THE UNITED STATES

October Term 1985

JAMES E. AMEND and J. D. AMEND,

Petitioners,

v.

H. BRYAN POFF, JR., ET AL

Respondents,

Appeal From a Judgment of the
United States Court of Appeals
For the Fifth Circuit

REPLY BRIEF OF PETITIONERS, JAMES E. AMEND and J. D. AMEND To Respondents Reply to Petitioners' PETITION FOR WRIT OF CERTIORARI

James E. Amend and J. D. Amend
Pro Se
615 Texas Commerce Bank Building
Amarillo, Texas 79109
(806) 352-7541

BEST AVAILABLE COPY

TABLE OF CONTENTS

		Page
TABLE OF AUTHORITIES AND CITATIONS----------		i
PETITIONERS' REPLY TO RESPONDENTS' OPPOSITION----------		1
I	Substantiality of the Federal Question----------	1
II	Jurisdictional Grounds for Writ--------	4
III	Review of Writ Under Rule 17----------	6
IV	Non-judicial Defendants Who Responded----------	8
CONCLUSION----------		9

TABLE OF AUTHORITIES AND CITATIONS

Cases Page

Chaison v. Stark, Tex. Civ.
App., 29 S.W. 2d 500,503---------- 4

First State Bank of Semonole v. Dillard,
Tex. Civ. App.,
71 S.W. 2d 407, 410---------- 4

Citations Page

28 U.S.C.S. § 1253---------- 5-6

Rule 17---------- 6

Rule 34---------- 9

Rule 21---------- 5

IN THE

SUPREME COURT OF THE UNITED STATES

No. 85-183

JAMES E. AMEND and J. D. AMEND
Petitioners,

v.

H. BRYAN POFF, JR., ET AL
Respondents,

Petitioners' Brief in Reply

I. Petitioners Reply to Respondents Treatment of the Substantiality of the Federal Question Which was Presented to the Court for Determination.

In replying to the respondents' briefs in opposition, we first consider the fact that the subject briefs definitely ignore the question presented to be reviewed. The respondents have presented some fifty pages of burdensome, irrelevant and immaterial matter for this Court's consideration as they have dome in the lower

courts; as a matter of fact, the Amends have been repeatedly harassed with this obfuscatory procedure for more than nine years.

The respondents have declined to address any of the questions that are, or might be, material to the substantiality of the federal question; they have failed to even so much as mention the question of concern; they only endeavour to change the subject so to speak. In Judge Poff's reply, "the reexamination of facts tried by the jury", as set out by the petitioners, is not addressed at all; the declaration of a mistrial is the sum and substance of the discussion. The act of declaring a mistrial by a judge certainly does not violate constitutional rights pursuant to the Seventh Amendment, however it might very well violate constitutional rights pursuant to the Fifth and Fourteenth Amendments; it has, in fact, denied the Amends "their day in court" for more than four years. The respondents do not discuss this matter

at all.

There is actually no real issue involved in the substantiallity of the federal question for the reason that the controlling facts are such that there is no dispute, and there is only one question which finally must be answered. The United States Court of Appeals For the Fifth Circuit affirmed a decision of a United States District Court to dismiss "Amends' federal claims as "wholly insubstantial" and insufficient to support federal jurisdiction". There is no question other than the substantiallity of the federal question, which is the only question which must finally be answered. The federal question is substantial for the reason that the undisputed facts evidence the violation of Amends' rights guaranteed under the Seventh Amendment to the United States Constitution:

1. The Amends allege that Judge Poff reexamined facts tried by a jury. The defendants do not dispute the allegation, in fact, Defendants R. A. Wilson and R. L. Templeton confirm it in

briefs filed in this Court.

2. The Amends allege that Judge Poff's reexamining facts tried by the jury violate constitutional rights pursuant to the Seventh Amendment to the United States Constitution. This is not disputed by any of the defendants.

3. The Amends allege that violation of rights guaranteed under the United States Constitution, constitutes a substantial federal question. The allegation is disputed by no one.

The above within itself should be sufficient for the disposition of this entire matter. First State Bank of Seminole v. Dillard, Tex Civ. App. 71, S.W. 2d 407, 410- Also, "An issue of law arises when evidence is undisputed and only one conclusion can be drawn there from." Chaison v. Stark, Tex. Civ. App., 29 S.W. 2d 500,503.

II. Petitioners' Reply to Respondents' Discussion of Jurisdictional Grounds for Writ of Certiorari.

We now address Respondents' discussion concerning

the petitioners grounding their request for a writ on 28 U.S.C.S. § 1253. (IV) under (e) of .1. under Rule 21, listing the concise grounds on which the jurisdiction of this court is invoked reads as follows: The statutory provision believed to confer on this Court jurisdiction to review the judgment or decree in question by writ of certiorari. We emphasize, (the statutory provision BELIEVED to confer) jurisdiction. the Petitioners certainly believed that they were using concise grounds sufficient to confer this Court's jurisdiction to review the writ or they would not have used it. Now, if the Court deems it essential that another statutouy provision be used, the petitioners will certainly comply as directed by the Court. This would seem to be a very minor technicallity, and for the reaason that pro se pleadings, in suits seeking compensatory damages and injunctive relief are to be judged with liberality, and because the petitioners based their

belief on the following, the obstacle, if there be one, should not be insurmountable.:

> "28 U.S.C.S. § 1253 must be read in connection with provisions of 28 USCS § 1294 that appeals from reviewable decisions of the district and territorial courts shall be taken to the courts of appeals as follows: (1) From the District Court of the United States to the Court of Appeals for the circuit embracing the district." Longshoremans and Warehouseman's Union v. Ackerman (1948), D.C._(Hawaii) 82_F. Supp._65, reviewed on grounds (CA 9 Hawaii) 197 F2d 860, cert den 342 US 859, 96 L Ed 646, 72 S CT 85."

III. Petitioners' Reply to Respondents' Comments Concerning Review of Writ of Certiorari Under Rule 17.

A. Respondent Poff alleges that he is absolutely immune from liability. In suits seeking Compensatory danages it is essential that liability be established. Under Trust law, a judge, a lawyer or anyone else dealing with fiduciary ties of a Trustee-Beneficiary relationship has made himself liable to the Beneficiary. In this suit it is an undisputed fact that Judge Poff reexamined facts tried by a jury, an act which the Amends allege violated constitutional rights and also

breached fiduciary rights. The Amends can find no law which deals with the situation, and they believe that it is an important question of federal law which has not been settled or reviewed by this Court.

B. Petitioners believe that the affirmation of a decision by a federal court of appeals which the federal district court did not make, and which is inconsistent with the usual course of judicial proceedings is certainly sufficient for the exercise of this Court's supervision.

C. The employment of obfuscation in judicial proceedings is, generally speaking, only a means for accomplishment of unlawful purpose; obfuscation does nothing to further justice. It is time comsuming and it is very expensive. This is a very important question of federal law and its widespread employment by those seeking to undermine the cause of justice warrants settlement in this Court.

IV. Petitioners' Reply to the Non-judicial Defendants Who Responded in Opposition to the Writ of Certiorari.

In the interest of brevity, the only thing that the petitioners will further reply to in the briefs of the non-judicial defendants is R. A. Wilson's comments related to "obfuscation". Mr. Wilson speaks of the petitioners mistaken assertion that there has been a violation of their constitutuionally or otherwise federally protected rights in the mistrial declared by Judge Poff. This statement is simply not true; the petitioners assert that reexamination of facts tried by a jury is the violation. The declaration of a mistrial is what Mr. Wilson attempts to focus attention on and divert it away from the reexamining of facts tried by a jury. Even though the question presented for determination was the substantiallity of federal question, R. A. Wilson's main topic is the mistrial, which he refers to at least 10 times. He

further evidences his obfuscation by stating that petitionres made no effort to exercise the right of appeal available under state law. Mistrials are unappeable. We are only concerned in these proceedings with the substantiallity of federal question; the sole basis of the dismissal and a matter which could not be appealed under state law. Otherwise, the briefs do not seem to comform to the requirements of .6. under Rule 34. The matter as presented by these respondents is burdensom, it is largely irrelevant and immaterial, it is not concise and it is decidedly frivolous. It could very well be disregarded and stricken by the Court pursuant to Rule 34.

CONCLUSION

Petitioners respectfully submit that the Court determine that reexamination of facts tried by a jury, by a member of the judiciary, constitutes a substantial federal question, and that the writ of certiorari should be granted.

Respectfully submitted,

James E. Amend

J. D. Amend

Pro Se
615 Tex. Commr. Bank Bldg.
Amarillo, Texas 79109
(806) 352-7541

CERTIFICATE OF SERVICE

It is certified that on September 5, 1985, a true reproduction of the foregoing Reply Brief was forwarded to all the attorneys representing defendants at the addresses of record.

J. D. Amend